for the sale of the lands. It is undisputed that this order for sale was subject to section 3 of the Small Holdings (Restriction of Sale) Enactment, 1931. On the 20th July, 1933 the Enactment was not continued and expired on that date.

On the 27th July, 1933 on a summons for directions for the sale it was ordered that the application be adjourned generally pending reference to the State Council. On 15th September, 1933 on a summons for further consideration of the summons adjourned on 27th July, 1933 the Registrar gave directions for sale of the lands. Against this order appellant appealed to the Judge at Ipoh which appeal was dismissed on the 16th October, 1933. Appellant now appeals to this Court on three grounds:—

1. That the sale was subject to the consent of the State Council;
2. That the respondent should have appealed against the Registrar's decision of 27th July, 1933;
3. That the appellant is entitled to the protection of the Small Holdings Enactment of 1931.

The Enactment from its short title and provisions is professedly a temporary measure. On 17th July, 1933 respondent held the order for the sale of the lands subject to the express duty of the Registrar to forward the order of sale to the State Council and for the State Council to receive it and consider delaying the operation of the order. On the 20th July, 1933 did the respondent hold his order freed from these drawbacks?

The Enactment sets up as a tribunal the State Council to enquire and give or refuse consent to all Court orders for the sale of small holdings, such orders to be forwarded by the Registrar. On 20th July, 1933 the Enactment was no longer continued by the Chief Secretary to Government, and therefore expired and remained no longer in force in accordance with the provisions in its last section No. 4.

The appellant maintains that he had on 17th July, 1933 acquired a right or privilege under the Enactment which should remain to him. It may be granted that at 17th July, 1933 he had the right to have the order of sale forwarded by the Registrar to the State Council and to be there considered.

But on 20th July, 1933 the Enactment expired and that expiration in the absence of any express provision to the contrary removed the foundation on which rested the State Council's power to take action on these orders and of the Registrar's power to forward such orders. Appellant's right survived and was not taken away from him, but the means whereby it would be made effective for him disappeared, and without those means his right became incapable of being further developed or made effectual.

In *Stevenson* v. *Oliver*, (1841) S.M. & W. 234 (1) it was said that "if an Act expires the duration of its provisions is a matter of consideration." In the absence of express provisions that the State Council should continue to function as a special tribunal for the purposes of this Enactment after the expiration of the Enactment it would be too daring, in the absence of express authority, to hold that the State Council could so continue to function. In the case of *Steavenson* v. *Oliver* the apothecary had fully attained to his right to practise as such during the continuance of the Act and it was held that his right to practise continued after the Act had expired. The apothecary's right was complete and required no machinery to perfect or assist it after the expiration of the temporary Act. The apothecary was in a position analogous to that in which the appellant would have been had the State Council considered this order for sale and refused consent to the sale. Appellant's right would then have been perfected and could not be negatived as nothing further could be done with or against it. But in the case appellant's right depends on the existence and functioning of machinery which no longer exists.

I am of opinion that the appeal fails in all points and should be dismissed with costs.

Appeal allowed.

[APPELLATE CRIMINAL JURISDICTION]
MUDIE, J.

November, 17, 1933.

CHOW KWAN.....Appellant.

v.

PUBLIC PROSECUTOR.....Respondent.

[PERAK MAGISTRATE'S CRIMINAL APPEAL No. 121 of 1933]

Criminal Procedure Code, s. 172 (iii)— Prosecution's right of reply where a point of law is taken but no evidence has been adduced for the defence.

Where the defence leads no evidence but raises a point of law in a criminal trial before a Magistrate, the Court may hear the prosecution on the point but in such a case the defence must be afforded an opportunity of replying to the arguments of the prosecution.

George Terrell for Appellant.

L. C. Simpson-Gray, Deupty Public Prosecutor, for Respondent.

MUDIE, J.—A point was raised by the Appellant which is of some importance to Magistrates. Though the accused had not adduced any evidence, the learned Magistrate asked the officer conducting the prosecution if he had anything to say on the points of law raised by the defence.

It is provided by section 172 of the Criminal Procedure Code, 1926, that

"In summary trials under this Chapter

(iii) "The officer conducting the prosecution shall have the right of reply on the whole case when the accused has adduced evidence"

If no evidence is led for the defence, the prosecution does not have a right of reply on the whole case.

If a point of law is taken by the defence, in my opinion, it is open to the Magistrate to ask the prosecuting officer to argue the point, but he must give the defence an opportunity of replying to the arguments of the prosecuting officer.

In summary trials where evidence is not adduced by the accused, the last word is always with the defence.

Order accordingly.

[APPELLATE CIVIL JURISDICTION]

MUDIE, J.

September 29, 1933.

HAJI AHMAD BIN IMAM AGONG..Appellant

v.

PUTEH BINTI HAJI AHMAD.....Respondent

[PERAK MAGISTRATE'S CIVIL APPEAL No. 32 of 1933]

Contract to repay money—Subsequent agreement for discharge by performance in a different matter—Accord without satisfaction—Validity of the original contract.

Where parties agree that a contract shall be satisfied in a manner other than that originally agreed on, there is no novation while the satisfaction agreed on remains executory. The original contract remains enforceable.

Haji Abdul Wahab for Appellant.

Sinha for Respondent.

MUDIE, J—This is a claim for $500/-, money lent to the defendant. The defendant promised to pay it back in seven months, but failed to do so. The matter was settled on the defendant agreeing to transfer her half share in a piece of land to the plaintiff. She has failed to transfer the land in fulfilment of the agreement. The plaintiff sued her in the Magistrate's Court for the $500/-. The suit was dismissed on the ground that the agreement to repay the loan was discharged by the agreement to transfer the land. The plaintiff now appeals.

I think the learned Magistrate was wrong in holding that the first agreement was discharged by the second. In my opinion there was no novation, and section 62 of the Contract Enactment is inapplicable.

The new agreement is not by way of substitution for the old agreement. It does not rescind or alter the old agreement. It is an agreement as to the way in which the first agreement is to be satisfied. The first agreement is still in force and if it is not satisfied in the manner provided by the second agreement it can be enforced by action.

There is abundance of authority for the proposition that accord without satisfaction has no legal effect. The original cause of action is not discharged so long as the satisfaction agreed on remains executory.

Counsel for the Respondent argued that the law in India is otherwise and cited *N. M. Firm* v. *Thoperumal Chetty*, (1922) 45 Madras 180. The Calcutta decisions, however, follow the English law. Vide *Manohur* v. *Thakur Das*, (1888) 15 Calcutta 319. This seems to me to be a case where the English decisions apply. In my opinion the first agreement was never discharged. The plaintiff is, therefore, entitled to recover.

The appeal is allowed. Judgment will be entered for the plaintiff for $500 with costs here and below.

Appeal allowed.

[REVISIONAL CIVIL JURISDICTION]

MUDIE, J.

November 17, 1933.

ALANG KANGKONG BIN KULOP BRAHIM... Applicant.

v.

PANDAK BRAHIM BIN MAT ALEH..... Respondent.

[PERAK CIVIL APPLICATION No. 28 of 1933]

[APPLICATION FOR REVISION OF THE MAGISTRATE'S DECISION IN TELUK ANSON CIVIL SUIT No. 290 of 1933]

Contract Enactment, s. 23—Muhammadan Laws Enactment, 1904, s. 8—Marriage brokage—Object opposed to public policy.

A marriage brokage agreement is void as having an object opposed to public policy within the meaning of Section 23 of the Contract Enactment.

This principle applies generally and is unaffected by Section 8 of the Muhammadan Laws Enactment, 1904. *Khem Singh* v. *Anokh Singh*, 7 F.M.S.L.R. 199 followed.

Haji Abdul Wahab for Applicant.

Respondent in person.

MUDIE, J.—This is an application for revision under section 56 of the Courts Enactment, 1918.

The petitioner is the defendant in a suit brought by the plaintiff in the Magistrate's Court for $200 damages for breach of contract. Judgment was given in favour of the plaintiff for $100 and costs.